

REMARKS

This is in response to the initial Office Action mailed February 18, 2003, in relation to the above-identified patent application. In that initial Office Action, the Examiner objected to the drawings under 37 C.F.R. 1.83(a) for not showing a feature recited in Claim 14. The Examiner also objected to Claims 3, 5, and 16 for informalities. The Examiner rejected Claims 1-20 and Claim 26 under the second paragraph of 35 U.S.C. 112 as being indefinite for failing to particularly point out and distinctly claim the subject matter of the invention. The Examiner also made a 35 U.S.C. 102 (b) rejection of Claims 1-8, 10-13 and 15-19 for being anticipated by JACOBS, U.S. Patent No. 1,748,228, and Claims 25-27 for being anticipated by COULTHARD, U.S. Patent No. 4,001,987. Additionally, the Examiner rejected Claims 1-8, 10-13, 15-19 and 21-27 under 35 U.S.C. 103 (a) as being unpatentable over COULTHARD in view of JACOBS. The Examiner has stated that Claims 9, 14, and 20 would be allowable if rewritten to overcome the 112 rejections.

Claim 14 has been amended to correspond with the features shown in the drawings. Claims 3, 5, and 16 have been amended to correct the informalities, as suggested by the Examiner. Independent Claim 1 as well as Claims 7, 8, 14, and 26 have been amended to comply with 35 U.S.C. 112, to more particularly point out and distinctly claim the subject matter of the invention. Independent Claims 1, 21, and 25 have been amended to comply with 35 U.S.C. 102(b) and 103(a), to more clearly point out the novel and unobvious features of the present invention and clearly distinguish the same over the alleged prior art. In particular, Independent Claims 1, 21, and 25 have been amended to replace the term "location means" with

the term "channel". Further, Independent Claims 1 and 21 have been amended to include the added limitation "... said at least one periphery component being 'fixedly secured' to the clamping device by way of one or more channels" and Independent Claim 25 has been amended to include the added limitation "... said panel components being 'fixedly secured' to the clamping device by way of one or more channels." Support for these amendments can be found in the illustration of Figures 2-6, and on page 4, lines 18-22, page 7, lines 21-24, page 9, lines 8-17, page 10, lines 25-28, and page 11, lines 1-3. Other amendments, prompted by the amendments to Independent Claims 1, 21, and 25 have been made to improve clarity and readability of the claims. Accordingly, Claims 1-27 remain pending.

35 U.S.C. 112

Applicant has amended Independent Claim 1 as well as Claims 7, 8, 14, and 26 to comply with 35 U.S.C. 112, to more particularly point out and distinctly claim the subject matter of the invention. Independent Claim 1 has been amended from "... clamping device includes a body portion having locations for the location of a base component ..." to "... clamping device includes a body portion having a base component location means ...". Claim 7 has been amended from "... the clamping device location means comprise a channel having at least a first open end" to "... the channels have at least a first open end." Claims 8 and 9 were amended from "... entrance and/or exit of the channel ..." to "... entrance or exit of the channel ..." to be consistent with Claim 7. Claim 8 was also amended from "... the channel is/are shaped to aid location of at least a portion of a component therewith" to "... the channel, shaped to permit the positioning of at least a portion of a periphery component therewith." Claim 14 has been

amended from "... the aperture ..." to "... the base component location means is an aperture ...". Claim 26 has been amended from "... the location means on the clamping device are angularly spaced ..." to "... the channels on the clamping device are angularly spaced with respect to the base component ..." Therefore Independent Claim 1, and Claims 7, 8, 14, and 26, as newly amended, comply with 35 U.S.C. 112.

35 U.S.C. 102(b)

Applicant has amended Independent Claim 1 to overcome the Examiner's rejection of Claims 1-8, 10-13, and 15-19, for being anticipated by JACOBS. The newly amended Independent Claim 1 is not anticipated by JACOBS, because JACOBS does not describe, suggest, or teach: (1) a "guarding structure"; or (2) a "periphery component being 'fixedly secured' to the clamping device by way of one or more channels".

The JACOBS patent reference, a principle reference cited by the Examiner, relates to an improved towel rack which is particularly designed for attachment around the exterior of a hot water tank in order that the towels or other articles supported from the rack may be dried by being subjected to the heat radiated from the usual type of domestic hot water tank. The Examiner depicted the JACOBS patent as disclosing an apparatus for protective guarding, which guards against contact between towels located on adjacent arms of the rack.

Applicant asserts that the JACOBS patent does not disclose a guarding apparatus as such. Instead, the JACOBS patent discloses an apparatus with arms that "... are pivotally carried on the band," as illustrated in Figure 5 and described on page 1, lines 12-14 and 73-75 and in the claim on page 2, lines 12-13. It can be deduced from the range of the pivoting motion illustrated

Serial No. 09/981,428

Page 10

in Figure 5 that this pivoting of the arms will lead to contact between towels on adjacent arms. Because this pivoting motion is a claimed feature of the design and there is no teaching or suggestion that they be mounted otherwise, the JACOBS patent actually teaches away from a guarding apparatus.

Moreover, to further distinguish the subject invention from the invention described in the JACOBS patent, Independent Claim 1 has been amended to add the limitation "... said at least one periphery component being 'fixedly secured' to the clamping device by way of one or more channels." The English language definition of "fix" is "to make firm, stable, or stationary." *Webster's Third International Dictionary (1993)*. Thus, the "fixedly secured periphery component" of the subject invention does not allow for the pivoting motion of the periphery component with respect to the clamp, which is required and taught in the JACOBS patent. Therefore, the JACOBS patent does not and can not anticipate Independent Claim 1. Because Claims 2-8, 10-13, and 15-19 also include the limitation of Independent Claim 1, they also are not anticipated by JACOBS.

fixed
secured
definition

Applicant has amended Independent Claim 25 to overcome the Examiner's rejection of Claims 25-27, for being anticipated by COULTHARD. The newly amended Independent Claim 25 is not anticipated by COULTHARD, because COULTHARD does not describe, suggest, or teach "a series of spaced channels with which said panel components can be selectively engaged".

The COULTHARD patent reference, another principal reference cited by the Examiner, teaches a screen construction applicable to exhibition and display purposes but also applicable to

booths for attendants or projection equipment, room dividers or toy building kits. The COULTHARD invention comprises a plurality of support members of elongate form and uniform circular cross-section and a plurality of rectangular panels. A plurality of clips on two opposite edges of each panel snap on to the support members, thus enabling adjacent columns of panels to be set at any inclination to each other.

Applicant asserts that the COULTHARD invention does not disclose the connection means of the subject invention, namely "... clamping devices including a base component location means to allow the same to be engaged with the base component and a 'series of spaced channels with which said panel components can be selectively engaged', said panel components being fixedly secured to the clamping device 'by way of one or more channels'." The COULTHARD invention claims to use open ended clips, as described in Independent Claim 1 and illustrated in Figures 3 and 4. These clips differ from the clamps of the subject invention in that they do not have channels, which are a key claimed feature of Independent Claim 25. The English language definition of a "channel" is a "gutter, groove, or furrow." *Webster's Third International Dictionary (1993)* The COULTHARD invention does not have these "channels". Instead the COULTHARD patent employs a single bore as a means for connecting a panel to a clip. Furthermore, the Examiner has admitted that the "... COULTHARD patent does disclose [a] clamping device [with a] body portion with open ends for receiving the base component rod with location means being 'channels'." Therefore, the COULTHARD patent does not and can not anticipate Independent Claim 25 as now amended. Because Claims 26-27 also include the limitation of Independent Claim 25, they also are not anticipated by COULTHARD.

35 U.S.C. 103(a)

Applicant has amended Independent Claims 1 and 25, as set forth above, and has also amended Independent Claim 21 to overcome the Examiner's rejection of being made obvious by the COULTHARD patent, in view of the JACOBS patent. Applicant believes that the Examiner's hypothetical combination of the JACOBS and COULTHARD patent references represent a hindsight reconstruction of the subject invention and as such further constitutes an improper combination of prior art references. In re Shaffer, 108 USPQ 328 (CCPA 1956); and Bolyard v. Watson, Com'r, 124 USPQ 165 (DC Dist. Col. 1960). Accordingly, Applicant does not believe that JACOBS or COULTHARD can be combined to render the subject invention unpatentable.

The JACOBS patent reference is from an altogether divergent field of endeavor from that of the subject invention and the COULTHARD patent reference, and it does not disclose any type of "guarding apparatus" whatsoever (see discussion on page 9, paragraph 1). 35 U.S.C. 103 only presumes that an inventor will be familiar with prior art in his field of endeavor, and it does not presume that an inventor will be familiar with nonanalogous art from outside his field of endeavor. In re Winslow, 151 USPQ 48 (CCPA 1966). The design of a towel rack is a comparatively simple task having few constraints as compared to the more complex issues involved in designing a machine guarding apparatus. The purpose of the JACOBS invention is to dry wet towels or the like, whereas the purpose of the subject invention is to provide a barrier around the perimeter of machinery or work areas for health and safety reasons. Applicant does not believe that one would look to the towel or laundry drying industry when trying to provide an

improved machinery guarding apparatus in a workshop environment. There is no basis for concluding that the JACOBS patent would be considered by a person of ordinary skill in the art of guarding apparatus construction when designing a guarding apparatus. Such a basis is required for 35 U.S.C. 103 in order to find the teachings of a reference to be considered prior art. In re Horn, 203 USPQ 969 (CCPA 1979).

Assuming that the COULTHARD patent can be combined with the JACOBS patent, the COULTHARD patent reference teaches of a clip that is "bolted or screwed" directly to the panel. Therefore the COULTHARD patent does not teach a clamp with "... one or more channels for the location of at least one periphery component ..." as discussed on page 10, paragraphs 2-3, and page 11, paragraph 1. The JACOBS patent reference teaches of securing periphery components (rack arms) to the clamp by way of "sockets in which the heads or ends of the rack arms are inserted." Thus, the JACOBS patent does not teach how to "fixedly secure" the periphery components to the clamp (see discussion on page 9, paragraph 2). Accordingly, the hypothetical combination of the COULTHARD and JACOBS patent references does not teach one of ordinary skill in the art how to create a guarding apparatus using a "... clamping device [that] includes ... one or more channels for the location of at least one periphery component therewith, said at least one periphery component being fixedly secured to the clamping device by way of one or more channels." Therefore, the COULTHARD patent, in view of the JACOBS patent does not make the now amended Independent Claims 1, 21, and 25 obvious. Because Claims 2-8, 10-13, and 15-19 depend from Independent Claim 1, Claims 22-24 depend from Independent Claim 21, and Claims 26-27 depend from Independent Claim 25, they are not made obvious by the COULTHARD patent, in view of the JACOBS patent.

Serial No. 09/981,428

Page 14

CONCLUSION

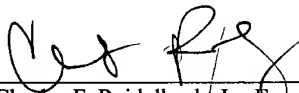
In view of the foregoing it is respectfully submitted that all of the pending apparatus claims of the present invention have been amended to particularly define the unobvious structure of the present invention. It is respectfully submitted, that, as amended, all of the pending claims of the subject patent application are in condition for immediate allowance. A reconsideration and allowance is therefore respectfully requested.

Respectfully submitted,

HIGGS, FLETCHER & MACK LLP
Attorneys for Applicant

Dated: July 18, 2003

401 West A Street
Suite 2600
San Diego, CA 92101
Telephone: 619-236-1551
Facsimile: 619-696-1410
E-Mail: reidelbach@higgslaw.com



Charles F. Reidelbach, Jr., Esq.
Registration No. 36,649